IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JASON PIETRZYCKI, on behalf of himself and all other plaintiffs similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 1:14-cv-06546
HEIGHTS TOWER SERVICE, INC., and MARK MOTTER,	)	Judge Sara L. Ellis
Defendants.	)	

HEIGHTS TOWER SERVICE, INC.'S AND MARK MOTTER'S ANSWER AND AFFIRMATIVE DEFENSES TO COLLECTIVE ACTION COMPLAINT

NOW COME the Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, by and through their attorneys, MARY C. O'CONNOR and FORAN GLENNON PALANDECH PONZI & RUDLOFF PC, and for their Answer to the Plaintiffs' Collective Action Complaint, state as follows:

NATURE OF CLAIMS

1. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*, for Defendants' failure to pay overtime wages to Plaintiff and other similarly situated employees for all time worked in excess of forty (40) hours in individual work weeks. Defendants' unlawful compensation practices have had the effect of denying Plaintiffs and other similarly situated employees their lawfully earned and living wages. Plaintiff brings his claim as a collective action pursuant to 29 U.S.C. § 216(b).

ANSWER: Defendants admit that Plaintiffs have initiated an action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA") and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*

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and that Plaintiffs allege Defendants failed to pay overtime wages to Plaintiffs and others allegedly similarly situated for all time worked in excess of forty (40) hours in individual work weeks; but further answering Defendants expressly deny the allegations contained within Paragraph 1 of Plaintiffs' Complaint. Defendants specifically aver that they have at all times been in compliance with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. ("FLSA") and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq*.

THE PARTIES

2. Plaintiff Pietrzycki resides in and is domiciled in this judicial district.

ANSWER: Defendants admit, upon information and belief, the allegations contained within Paragraph 2 of Plaintiffs' Complaint that Plaintiff Pietrzycki resides in and is domiciled in this judicial district.

3. Defendant Heights Tower is an Illinois Corporation located at 7842 State Route 71, Yorkville IL, 60560, within this judicial district.

ANSWER: Defendants deny the allegations contained within Paragraph 3 of Plaintiffs' Complaint wherein it is alleged that that Defendant Heights Tower ("HTS") is an Illinois Corporation; further answering admit that HTS maintains a business location located at 7842 State Route 71, Yorkville, Illinois 60560; and answering further, Defendant HTS avers that it is an Ohio Corporation, having its principal place of business in Knox County, Ohio, and Defendant Motter is an Ohio resident with his residence also being in Knox County, Ohio. Neither Defendant is located within this judicial district.

4. At all material times hereto, Defendant Heights Tower was Plaintiffs' "employer" as defined in the FLSA, 29 U.S.C. § 203(d) and the IWPCA, 820 ILCS § 115/2.

ANSWER: Defendants admit the allegations contained within Paragraph 4 of Plaintiffs' Complaint that at certain times Defendant HTS was Plaintiffs' "employer" as defined in the FSLA and the IWPCA.

5. Defendant Motter is the owner, President, and registered agent of Defendant Heights Tower and is involved in Heights Tower's day-to-day business operations. Among other

things, Defendant Motter has the authority to hire and fire employees, to direct and supervise the work of employees, and to distribute paychecks to employees.

ANSWER: Defendants admit that Defendant Motter is President of Heights Tower Service, Inc., admit that Motter is the registered agent of HTS, that he has authority to hire, retain, direct the work of and discharge HTS employees, and discharge employees; but further answering Defendants deny or deny for lack of knowledge all other allegations contained within Paragraph 5 of Plaintiffs' Complaint.

6 Defendant Motter is an "employer" as defined by the FLSA, 29 U.S.C. § 203(d) and the IWPCA, 820 ILCS § 115/2.

ANSWER: Defendants deny the allegations contained within Paragraph 6 of Plaintiffs' Complaint alleging that at all times Defendant Motter was Plaintiffs' "employer" as defined in the FSLA and the IWPCA.

7 At all material times hereto, Plaintiffs were employed by Defendants as "employees" within the meaning of § 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1) and within the meaning of IWPCA, 820 ILCS § 115/1 *et seq*.

ANSWER: Defendants admit that Plaintiffs were, at certain times, employed by Defendant HTS as "employees" within the meaning of § 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1) and within the meaning of IWPCA, 820 ILCS § 115/1/1 *et seq.,* but further answering expressly deny or deny for lack of knowledge all other allegations contained within Paragraph 7 of Plaintiffs' Complaint and for lack of knowledge and information sufficient to form a belief as to the truth of those allegations Defendants deny any allegation that there are other similarly situated persons or presumptive Plaintiffs who are or were employed by Defendants.

JURISDICTION AND VENUE

8. Subject matter jurisdiction is conferred on this Court by Title 28 U.S.C. § 1337 and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs' IWPCA claims pursuant to 28 U.S.C. § 1367.

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ANSWER: Defendants admit Paragraph 8 of Plaintiffs' Complaint, that the Court has subject matter jurisdiction over Plaintiffs' claims. Pursuant to Title 28 U.S.C. § 1337 and 28 U.S.C § 1331 and that this Court has supplemental jurisdiction over Plaintiffs' IWPCA claims pursuant to 28 U.S.C. § 1337.

9. At all times pertinent to this Complaint, Defendant Heights Tower was an enterprise engaged in interstate commerce or in the production of goods for commerce as defined in 29 U.S.C. 203(r) and 203(s).

ANSWER: Defendants admit that, at certain times, Defendant HTS was an enterprise engaged in interstate commerce or in the production of goods for commerce as defined in 29 U.S.C. § 203(r) and 29 U.S.C. § 203(s), but further answering deny all other allegations contained within Paragraph 9 of Plaintiffs' Complaint.

10. The annual gross sales volume of Heights Tower was in excess of $500,000.00 per year.

ANSWER: Defendants deny that at all material times the annual gross sales volume of Defendant, Heights Tower Service, Inc., was in excess of $500,000.00 and further answering deny all other allegations contained within Paragraph 10 of Plaintiffs' Complaint.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that the Defendant is located in this Judicial District and a significant part of the conduct that gives rise to this claim occurred within the Northern District of Illinois.

ANSWER: Defendants admit that venue is proper pursuant to 28 U.S.C. § 1391(b) in that HTS maintains a business location in, and conducts business within, this Judicial District and that a portion of its alleged conduct may have occurred within the Northern District of Illinois, but further answering Defendants expressly deny all of Plaintiffs' claims and causes of action and expressly deny all other allegations contained within Paragraph 11 of Plaintiffs' Complaint.

ALLEGATIONS OF FACT

12. Heights Tower is in the business of servicing towers--such as cellular towers and silos. As such, its employees travel to the locations where its clients' towers are located and perform functions such as tower upgrades, maintenance, and installation of equipment.

ANSWER: Defendants admit the allegations contained within Paragraph 12 of Plaintiffs' Complaint, that Defendant HTS is in the business of servicing cellular and other communication towers and that its employees travel to locations where its clients' towers are located to perform functions such as tower upgrades, maintenance, and installation of equipment.

13. Upon information and belief, Heights Tower has approximately 100 employees who are responsible for servicing towers.

ANSWER: Defendants deny the allegations contained within Paragraph 13 of Plaintiffs' Complaint that at all material times Defendant HTS employs 100 employees responsible for servicing towers.

14. The non-compliant practices as alleged herein were part of a practice and policy common to a group or "class" of past and present employees. Those past and present employees are entitled to receive Notice of these proceedings and afforded opportunity to join their individual claims.

ANSWER: Defendants deny the allegations contained within Paragraph 14 of Plaintiffs' Complaint wherein it is alleged that Defendants engaged in any non-compliant practices, that Plaintiffs are a group or "class" of past or present HTS employees entitled to Notice of these proceedings and afforded an opportunity to join any claims and further answering Defendants expressly deny all other allegations contained within Paragraph 14 of the Complaint and also aver that Defendants at all times complied with the FLSA, 29 U.S.C. § 201 *et seq*., and the IWPCA, 820 ILCS § 115/1 *et seq*. Defendants also lack sufficient information and belief to admit or deny Plaintiffs' allegations concerning unidentified individuals who have not joined in the action.

15. During the course of Plaintiffs' employment, Defendants directed Plaintiff to work in excess of forty (40) hours in individual work weeks and Plaintiff did customarily work in excess of forty (40) hours in individual work weeks. Plaintiff was not compensated one and one-half times his regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny the allegations contained within Paragraph 15 of Plaintiffs' Complaint, wherein it is alleged that at times during the course of any employment, Defendants directed Plaintiffs to work in excess of forty (40) hours in any individual work week, that Plaintiffs customarily worked in excess of forty (40) hours in any individual work week, and deny that Plaintiff was not compensated one and one-half times his regular hourly rate of pay for all time worked in excess of forty (40) hours in any individual work weeks. Answering further, Defendants lack sufficient information and belief to admit or deny any other of Plaintiffs' allegations concerning unidentified individuals who have not joined in the action and all other allegations contained within Paragraph 15 of the Complaint.

16. Other non-exempt similarly situated employees, likewise, were directed to work in excess of forty (40) hours in individual work weeks by Defendants and did work in excess of forty (40) hours in individual work weeks but were not paid one and one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny the allegations contained within Paragraph 16 of Plaintiffs' Complaint wherein it is alleged that other, non-exempt similarly situated employees of Defendant HTS worked in excess of forty (40) hours in any individual work week, that Plaintiffs customarily worked in excess of forty (40) hours in any individual work week, and deny that such persons were not compensated one and one-half times her/his regular hourly rate of pay for all time worked in excess of forty (40) hours in any individual work weeks. Answering further, Defendants lack sufficient information and belief to admit or deny any other of Plaintiffs' allegations concerning unidentified individuals who have not joined in the action and all other allegations contained within Paragraph 16 of the Complaint.

17. The specific practice complained of here relates to Defendants' failure to pay overtime to Plaintiff and other similarly situated employees for those hours constituting "Drive

Time", as discussed in greater detailed below. Defendants in fact would pay Plaintiffs overtime compensation but would exclude the time spent during "Drive Time" in computing overtime hours.

ANSWER: Defendants deny that they failed to pay overtime to Plaintiffs or any other persons similarly situated for any hours designated as "Drive Time," deny that Defendants would Pay Plaintiffs overtime compensation but would exclude the time spent as "Drive Time" in computing overtime hours, and further answering Defendants deny all other allegations contained within Paragraph 17 of Plaintiffs' Complaint for lack of knowledge and information sufficient to form a belief as to the truth of those allegations.

18. Heights Tower typically serviced towers that were located in other states. Plaintiffs would arrive before driving out of state, at Height Tower's office/warehouse (herein, referred to as "Point A") early in the morning and begin their day.

ANSWER: Defendants admit that towers in other states have been serviced by HTS, from time to time, that on occasion (but not always) and for such purposes Plaintiffs would meet at the HTS warehouse ("Point A"), but further answering deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof those allegations contained within Paragraph 18 of Plaintiffs' Complaint.

19. The work done at Point A was substantial and the Plaintiffs were compensated for it. Typical work at Point A involved cleaning trucks, figuring out what materials were needed for the upcoming work, transferring parts, and selecting inventory.

ANSWER: Defendants deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof that any work performed at Point A ever was substantial and further answering deny all other allegations contained within Paragraph 19 of Plaintiffs' Complaint.

20. Once the Plaintiffs would leave Point A, they would drive to their next location of the day which was typically a location in another state (often Racine, Wisconsin or Milwaukee,

Wisconsin) where a warehouse was located. (herein, referred to as "Point B") At Point B, the Plaintiffs would typically pick up more parts that were needed for their tower jobs.

ANSWER: Defendants deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof those allegations contained within Paragraph 20 of Plaintiffs' Complaint, wherein it is alleged that once Plaintiffs would depart from Point A, they would drive to a next location, a/k/a Point B, at which location they would typically pick up more parts needed for any job.

21. From Point B, the employees would then drive to the location where the towers were located (herein, referred to as "Point C").

ANSWER: Defendants deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof those allegations contained within Paragraph 21 of Plaintiffs' Complaint wherein it is alleged that at all material times, once Plaintiffs would depart from Point B, they would drive to a next location, a/k/a Point C.

22. The time spent driving between "Point A", "Point B", and "Point C" was referred to as "Drive Time". Drive time earned a reduced compensation than the regular wages earned by the Plaintiffs. For example, Plaintiff Pietrzycki earned $23.00 for regular hours but only $10.00 per hour for Drive Time.

ANSWER: Defendants admit that, for certain payroll purposes, the time spent driving between Points A, B, and C was referred to as "Drive Time" but further answering expressly deny that Drive Time reduced Plaintiffs' compensation and further answering expressly deny all other allegations contained within Paragraph 22 of the Complaint.

23. In computing whether overtime hours were owed, the Defendants would not count Drive Time hours. For example, Plaintiff Pietrzycki's paystub for the week of May 17, 2014 shows that he worked 39.50 hours of regular time and 6.5 hours of Drive Time. He was not paid any overtime for this week.

ANSWER: Defendants expressly deny those allegations contained within Paragraph 23 of Plaintiffs' Complaint, wherein it is alleged that in computing whether any overtime hours were owed, Defendants would not count Drive Time hours and further answering deny all other allegations contained within Paragraph 23 of the Complaint.

24. At all times relevant, Defendants maintained an employee handbook that was distributed to all employees upon being hired. Page 12 of this Handbook sets forth that which Plaintiff and other similarly situated employee were supposed to receive regarding overtime wages. Specifically, the Handbook states: "Non-exempt employees who perform overtime work will be paid one-and-one-half times (1.5x) their regular rate of pay for every hour worked over forty (40) hours in a seven (7) day workweek."

ANSWER: Defendants admit that, at material times, Defendant HTS maintained an employee handbook which was distributed to all HTS employees, that p.12 of that handbook addresses overtime compensation, that in certain part the handbook states: "Non-exempt employees who perform overtime work will be paid one-and-one-half times (1.5x) their regular rate of pay for every hour worked over forty (40) hours in a seven (7) day work week," but, further answering, Defendants deny all other allegations contained within Paragraph 24 of the Complaint.

COLLECTIVE ALLEGATIONS

25. Plaintiff seeks to prosecute his FLSA claim as a collective on behalf of employees who worked for Defendants and performed maintenance on towers as employees within the past three years preceding this lawsuit to the day of trial and elect to opt-in to this action pursuant to 29 U.S.C. § 216(b) and who worked in excess of forty (40) hours during one or more weeks but were not paid lawful wages and overtime compensation for all such time.

ANSWER: Regarding the allegations in Paragraph 25 of Plaintiffs' Complaint, Defendants admit that Plaintiffs purports to bring the Complaint under the FLSA on behalf of himself and others. Except as expressly admitted, Defendants deny all other allegations of Paragraph 25 of Plaintiffs' Complaint and incorporate, fully as if rewritten here, all other factual and legal defenses.

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26. Plaintiff and those similarly situated were entitled to an overtime rate of pay equal to time and one-half wages for overtime hours worked.

ANSWER: Defendants admit allegations contained within Paragraph 26 of Plaintiffs' Complaint wherein it is alleged Plaintiffs and other current and former employees of HTS were entitled to an overtime rate of pay for all overtime hours worked but, further answering, expressly deny any violation of law and expressly deny all claims and causes of action.

27. In the course of employment with Defendant, Plaintiff and the other current and former employees similarly situated were not paid their overtime rate of pay for all overtime hours worked.

ANSWER: Defendants deny the allegations in Paragraph 27 of Plaintiffs' Complaint wherein it is alleged that in the course of their employment with Defendant, Plaintiffs and other current and former employees similarly situated were not paid their overtime rate of pay for all overtime hours worked.

28. There are estimated to be over 100 current and former employees within the asserted class for this collective action during the material time who are similarly situated to Plaintiff. With such numbers of similar claims for unpaid overtime compensation, a collective action is a superior procedure for adjudicating such claims. Plaintiff requests that the Court authorize and supervise notice to the members of the asserted classes so that all claims may be resolved efficiently in a single proceeding.

ANSWER: Defendants deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof those allegations contained within Paragraph 28 of Plaintiffs' Complaint wherein it is alleged there are over 100 current and former employees within any asserted class during the material time(s) who are similarly situated to Plaintiffs, deny that a collective action is superior procedure for adjudication of any alleged claims, and Defendants deny that this case is appropriate to be maintained as a collective action under 29 U.S.C. § 216(b). Answering further, Defendants lack sufficient information and belief to admit or deny Plaintiffs' allegations concerning unidentified individuals who have not

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joined in the action, and, on that basis, deny all other material allegations in Paragraph 28 of Plaintiffs' Complaint.

29. The records, if any, should be in the custody or control of Defendants concerning the members of the asserted collective, the number of hours actually worked by Plaintiff and all other similarly situated employees, and the compensation actually paid, or not paid, to such employees.

ANSWER: Defendants admit that Defendant Heights Tower Service, Inc., maintains certain business and payroll records concerning alleged members of the asserted class, the number of hours actually worked, and the compensation paid, but further answering deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof all other allegations contained within Paragraph 29 of Plaintiffs' Complaint.

30. Plaintiff will fairly and adequately protect the interests of each Class and has retained counsel that is experienced and competent in class/collective actions and employment litigation. Plaintiff has no interest that is contrary to, or in conflict with members of their respective collective.

ANSWER: Defendants deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof those allegations contained within Paragraph 30 of Plaintiffs' Complaint wherein it is alleged that Plaintiffs will be fairly and adequately situated to protect any interests of any alleged class of persons, admit upon information and belief that Plaintiffs' counsel is capable, but further answering deny or deny for lack of knowledge all other allegations contained within Paragraph 30 of the Complaint.

COUNT I
Violation of the Fair Labor Standards Act—Overtime Wages
(Plaintiff Individually And On Behalf of all Similarly Situated Employees—Against Defendants Heights Tower And Motter)

31. Plaintiffs hereby reallege and incorporate paragraphs 1 through 30 of this Complaint, as if fully set forth herein.

ANSWER: As to those allegations asserted within Paragraph 31 of Plaintiffs' Complaint, Defendants incorporate by reference all previous admissions, denials and averments as if fully set forth herein.

32. This Count arises from Defendants' violation of the FLSA, 29 U.S.C. § 201 et seq., for their failure to pay overtime wages to Plaintiff and other similarly situated employees for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny the allegations in Paragraph 32 of Plaintiffs' Complaint. Answering further, Defendants complied with the FLSA, 29 U.S.C. § 201 *et seq.,* and properly compensated Plaintiffs and all others similarly situated for all time worked.

33. During the course of their employment by Defendants, Plaintiffs conducted repair and maintenance work on towers and were not exempt from the maximum hour provisions of the FLSA, 29 U.S.C. § 207.

ANSWER: Defendants admit that at times during their employment, Plaintiffs conducted repair and maintenance work on towers and at times were not exempt from the maximum hour provision of the FLSA, 29 U.S.C. § 2017, but further answering deny all other allegations in Paragraph 33 of Plaintiffs' Complaint for lack of knowledge and information sufficient to form a belief as to the truth of those allegations.

34. Pursuant to 29 U.S.C § 207, for all time which Plaintiff and other similarly situated employees worked in excess of forty (40) hours in individual work weeks, they were entitled to be compensated at a rate of one and one-half times their regular hourly rate of pay.

ANSWER: Defendants admit that pursuant to 29 U.S.C § 207, for all time Plaintiffs and others similarly situated worked in excess of forty (40) hours in individual work weeks, they were entitled to be compensated at a rate of one and one-half times their regular hourly rate of pay but further answering Defendants expressly deny any violation(s) and expressly deny all other allegations contained within Paragraph 34 of Plaintiffs' Complaint. Answering further, Defendants aver that at all times they complied with the complied with the FLSA, 29 U.S.C. § 201 *et seq*., and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*

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35. Defendants did not compensate Plaintiff at a rate of one and one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny the allegations in Paragraph 35 of Plaintiffs' Complaint wherein it is alleged that Defendants did not compensate Plaintiffs at the rate of one and one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks, and, answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*., and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*

36. The non-compliant practices as alleged herein were part of a practice and policy common to a group or "class" of past and present employees. Those past and present employees are entitled to receive Notice of these proceedings and afforded opportunity to join their individual claims.

ANSWER: Defendants deny any non-compliant practices, deny that they engaged in any pattern, practice or policy common to any group or class of persons of past or present employees, deny that any current or past employees are entitled to Notice and further answering deny all other allegations in Paragraph 36 of Plaintiffs' Complaint and answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*. and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*

37. During the course of Plaintiffs' employment, Defendants directed Plaintiff to work in excess of forty (40) hours in individual work weeks and Plaintiff did customarily work in excess of forty (40) hours in individual work weeks. Plaintiff was not compensated one and one-half times his regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny that during the course of Plaintiffs' employment Defendants directed Plaintiffs to work in excess of forty (40) hours in individual work weeks, deny that Plaintiffs customarily worked in excess of forty (40) hours in individual work weeks, deny that Plaintiffs were not compensated one and one-half times their regular hourly rate for all time worked in excess of forty (40) hours in individual work weeks and, further answering, deny all other allegations contained within Paragraph 37 of Plaintiffs' Complaint and answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*. and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq*.

38. Other non-exempt similarly situated employees, likewise, were directed to work in excess of forty (40) hours in individual work weeks by Defendants and did work in excess of forty (40) hours in individual work weeks but were not paid one and one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

ANSWER: Defendants deny that there are any other non-exempt, similarly situated employees who likewise were directed to work in excess of forty (40) hours in individual work weeks who were not paid one and one-half times their regular hourly rate of pay for any overtime hours worked, deny all other allegations contained within Paragraph 38 of the Complaint and answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*. and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq.*

39. Specifically, Plaintiff and other similarly situated employees were not paid overtime for Drive Time, the time spent driving between the predetermined start point ("Point A"), the mid-location to obtained materials ("Point B"), and their final destination—the tower ("Point C").

ANSWER: Defendants deny that Plaintiffs or any others similarly situated were not paid overtime for Drive Time, deny all other allegations contained within Paragraph 39 of Plaintiffs' Complaint, and, answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*. and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq*.

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40. Defendants' failure to pay Plaintiff and other similarly situated employees sufficient, true, and correct overtime wages for all time worked in excess of forty (40) hours in individual work weeks was a violation of the FLSA, 29 U.S.C. § 207.

ANSWER: Defendants deny the allegations in Paragraph 40 of Plaintiffs' Complaint and answering further, Defendants aver that at all times they complied with the FLSA, 29 U.S.C. § 201 *et seq*. and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS § 115/1 *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all similarly situated employees whom the Plaintiff seeks to represent in this action, request the following relief:

a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

b. Certification of this action as a collective action brought pursuant to 29 U.S.C § 216(b);

c. Designation of Plaintiff as representative of the FLSA Collective Action;

d. That Plaintiff be allowed to give notice of this collective action, or that this Court issue such notice at the earliest possible time; to all past and present Defendant employees who performed tower maintenance work during the three year period immediately preceding the filing of this suit, through and including the date of this Court's issuance by Court supervised notice;

e. That the Court find the Defendants' violations of the FLSA were willful;

f. That the Court award the Plaintiff and all similarly situated employees, overtime compensation for previous hours worked in excess of forty (40), for any given week during the past three (3) years in amounts to be determined at trial, and liquidated damages of an equal amount to the unpaid overtime compensation;

g, Costs of action incurred herein, including expert fees;

h. Attorneys fees, including fees pursuant to 29 U.S.C. §216 and other applicable statutes;

i. Pre-judgment and post-judgment interest as provided by law; and

j. Any other legal and equitable relief as this Court may deem appropriate.

WHEREFORE, the Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, regarding Plaintiffs' paragraphs entitled "Prayers for Relief," deny that Plaintiffs, JASON PIETRZYCKI, on behalf of himself and all other Plaintiffs similarly situated, are entitled to the relief requested, deny that any declaratory relief is appropriate, deny that a collective action exists or is relevant, deny that Plaintiff can or should be designated as a class representative, deny that Notice should be given to any others; deny that Defendants' actions were willful, deny that Plaintiffs or any others are entitled to any relief, deny that Defendants are liable for any attorneys' fees, experts' fees, or costs, whether pursuant to 29 U.S.C. § 216 or otherwise, deny that Plaintiffs are entitled to any pre-judgment or post judgment interest, and deny that Plaintiffs are entitled to any legal or equitable relief whatsoever.

COUNT II
Violation of the Illinois Wage Payment And Collection Act
(Plaintiff Individually And On Behalf Of All Similarly Situated Employees—Against Defendants Height Towers And Motter)

41. Plaintiffs hereby reallege and incorporate paragraphs 1 through 40 of this Complaint, as if fully set forth herein.

ANSWER: As to those allegations asserted within Paragraph 41 of Plaintiffs' Complaint, Defendants incorporate by reference all previous admissions, denials, and averments as if fully set forth herein.

42. The IWPCA, Section 2, defines wages as "any compensation owed to an employee by an employer pursuant to an employment contract or agreement between the 2

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parties, ...". Payment to separated employees is termed "final compensation" and defined as "wages, salaries, earned commissions, earned bonuses . . . . and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the two parties." 820 ILCS § 115/2.

ANSWER: Regarding the allegations in Paragraph 42 of Plaintiffs' Complaint, Defendants admit the prescribed definition of "wages" and "final compensation" in the IWPCA, Section 2. Further answering, Defendants deny any violation of the statute and aver they complied with the IWPCA, 820 ILCS § 115/2.

43. At all times relevant there existed an agreement between Plaintiff and other similarly situated employees with defendants that Defendants would comply in all respects with pertinent state and federal wage and hour laws and that they would be paid overtime in accordance with the Defendants' company handbook. Defendants breached that agreement in that Defendants' compensation policies violate wage and hour provisions of both state and federal law and the company's employee handbook.

ANSWER: Defendants admit that at relevant times there existed an agreement between Plaintiffs and Defendants and any others similarly situated that Defendants would comply in all respects with pertinent state and federal wage and hour laws, that overtime compensation would be properly calculated and paid but further answering deny all other allegations contained within Paragraph 43 of the Complaint and answering further, Defendants complied with the FLSA, 29 U.S.C. § 201 *et seq.*, and the IWPCA, 820 ILCS § 115/1 *et seq.*

44. At all times relevant, Defendants maintained an employee handbook that was distributed to all employees upon being hired. Page 12 of this Handbook sets forth that which Plaintiff and other similarly situated employee were supposed to receive regarding Overtime wages. Specifically, the Handbook states: "Non-exempt employees who perform overtime work

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will be paid one-and-one-half times (1.5x) their regular rate of pay for every hour worked over forty (40) hours in a seven (7) day workweek."

ANSWER: Regarding the allegations in Paragraph 44 of Plaintiffs' Complaint, Defendants admit that Defendant HTS maintained an employee handbook that classified overtime compensation wages. Answering further, Defendants aver the employee handbook speaks for itself; and further answering deny or deny for lack of knowledge and information sufficient to form a belief as to the truth thereof all other allegations contained within Paragraph 44 of Plaintiffs' Complaint.

45. The IWPCA, Section 4 provides that every employer shall pay "[A]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned." 820 ILCS § 115/4.

ANSWER: Regarding the allegations in Paragraph 45 of Plaintiffs' Complaint, Defendants admit the existence of the provision described in Section 4 of the IWPCA, 820 ILCS § 115/4. Answering further, Defendants deny any violation(s) of the statute and further answering aver they have complied with Section 4 of the IWPCA, 820 ILCS § 115/4.

46. The IWPCA, Section 5 provides that "[E]very employer shall pay the final compensation of separated employees in fully, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee." 820 ILCS § 115/5.

ANSWER: Regarding the allegations in Paragraph 46 of Plaintiffs' Complaint, Defendants admit the existence of the provision described in Section 5 of the IWPCA, 820 ILCS § 115/5. Answering further, Defendants deny any violation(s) of the statute and further answering aver they have complied with Section 5 of the IWPCA, 820 ILCS § 115/5.

47. Defendants have failed and continue to fail to pay overtime compensation due to Plaintiff and other similarly situated employees.

ANSWER: Defendants deny they ever failed or continue to refuse to pay any properly earned wages to Plaintiffs or any others similarly situated and further answering deny all other the allegations in Paragraph 47 of Plaintiffs' Complaint.

48. Defendants' acts as complained of herein and described above, namely the continuing refusal and failure to pay the earned wages to Plaintiffs and other similarly situated employees, constitutes a violation of the IWPCA.

ANSWER: Defendants deny they ever failed or continue to refuse to pay any properly earned wages to Plaintiffs or any others similarly situated and further answering deny all other the allegations in Paragraph 47 of Plaintiffs' Complaint.

WHEREFORE, Plaintiffs respectfully request a judgment be entered against Defendants as follows:

A. Declaring and decreeing Defendants' compensation practices as described herein, and such other violations which may come to light during the prosecution of this matter, in violation of the provisions of the IWPCA, 820 ILCS § 115/1 *et seq.*;

B. Awarding an amount of damages, to be shown by the evidence, to which Plaintiff and other similarly situated employees are entitled;

C. Allowing this Court to retain jurisdiction of the case until such time as it is assured that Defendants have remedied the compensation policies and practices complained of herein and are determined to be in full compliance with the law;

D. Directing Defendants to pay Plaintiff reasonable attorneys' fees, costs, interest, litigation expenses and;

E. Such other and further relief as this Court deems appropriate and just.

WHEREFORE, the Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, deny that Plaintiffs, JASON PIETRZYCKI, on behalf of himself and all other Plaintiffs similarly situated, is entitled to any of the relief requested and deny each and every allegation set forth in Plaintiffs' Complaint not specifically admitted to herein as true.

Exhibit A

AFFIRMATIVE DEFENSES

NOW COME the Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, by and through their attorneys, MARY C. O'CONNOR and FORAN GLENNON PALANDECH PONZI & RUDLOFF PC, and for their Affirmative Defenses to the Plaintiffs' Collective Action Complaint, state as follows:

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs have failed to state a claim or cause of action upon which any relief can be granted against these Defendants.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs have failed to adequately plead and establish the necessary elements for collective action treatment. Plaintiffs, therefore, should be prohibited from maintaining this case as a collective action.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' Complaint, and each claim and cause of action therein, is barred, in whole or in part, to the extent Plaintiffs and potential opt-in Plaintiffs have ever recovered or may have recovered, in other legal or administrative proceedings, any monies for the wages, benefits, or other compensation allegedly at issue in this action.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs' alleged claims and causes of action are barred by the doctrines of laches and estoppel by reason of Plaintiffs' and potential opt-in Plaintiffs' actions and course(s) of conduct.

FIFTH AFFIRMATIVE DEFENSE

5. The alleged claims and causes of action are barred by the applicable Statutes of Limitations, including but not limited to under 29 U.S.C. §255.

SIXTH AFFIRMATIVE DEFENSE

6. Defendants, at all material times, acted in good faith and had reasonable grounds for believing that their actions were in compliance with the FLSA, the IWPCA, and all other applicable laws, rules, and regulations.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendants did not act willfully or with knowledge or reckless disregard as to whether their conduct violated the FLSA, the IWPCA, or any other applicable laws, rules, and regulations.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs' alleged claims and causes of action, all of which are otherwise expressly denied, are barred under the *de minimus* doctrine.

NINTH AFFIRMATIVE DEFENSE

9. The alleged work activities as described by Plaintiffs within their Complaint are not compensable as eligible for overtime compensation under the Portal-to-Portal Pay, 29 U.S.C. §254 and its applicable rules and regulations.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs and the potential opt-in Plaintiffs, in the exercise of reasonable diligence, could/should have mitigated their alleged monetary damages and have not mitigated such alleged damages. By reason thereof, Plaintiffs and all potential opt-in Plaintiffs are barred from recovering any damages from Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

11. Defendants are entitled to a set-off in the amount of all monies paid to Plaintiffs and others who may be deemed similarly and constituting wages or compensation paid to them for "drive time," "ride time," or otherwise.

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TWELFTH AFFIRMATIVE DEFENSE

12. Defendants reserve the right to amend their Answer and specifically add additional affirmative and factual defenses as discovery proceeds.

WHEREFORE, having answered Plaintiffs' Complaint, Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, pray for judgment as follows:

1. That Plaintiffs' Complaint be dismissed in its entirety with prejudice;

2. That Defendants be awarded and reimbursed all their costs expended herein including all their attorneys' fees and experts' fees; and

3. For such other relief as the Court may deem proper at law or at equity.

JURY DEMAND

Defendants, HEIGHTS TOWER SERVICE, INC., and MARK MOTTER, demand a trial by jury as to all issues herein presented.

Respectfully submitted,
/s/ Mary C. O'Connor
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Attorneys for HEIGHTS TOWER SERVICE, INC., and MARK MOTTER.

Exhibit A

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2014, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the ECF registrants listed below:

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